

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOSEPH MORALES,

Petitioner,

Civil Action No. 1:08-CV-12097
Honorable Thomas L. Ludington

v.

SHIRLEE A. HARRY,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR RELIEF FROM JUSTICE
PURSUANT TO RULE 60(b), DENYING PETITIONER'S MOTION FOR
CERTIFICATE OF APPEALABILITY AND DENYING PETITIONER'S MOTION TO
PROCEED IN FORMA PAUPERIS ON APPEAL**

Petitioner's *pro se* "Motion for Relief From Justice Pursuant to F.R.Civ. Pr. 60(b) . . . and Certificate of Appealability" [Dkt. #22] was filed on July 15, 2010. Petitioner seeks relief from the Court's judgment denying his petition for a writ of habeas corpus because it was not timely filed. Petitioner seeks relief under Federal Rule of Civil Procedure 60(b)(1) & (6).

Relief from judgment may be granted pursuant to Rule 60(b)(1) where the Court's judgment was the result of "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). In this context, "mistake" encompasses legal errors. *See Barrier v. Beaver*, 712 F.2d 231, 233-34 (6th Cir. 1983). Petitioner disagrees with the Court's decision that the petition was untimely, but fails to show that the judgment was the result of "mistake, inadvertence, surprise, or excusable neglect." Accordingly, Plaintiff is not entitled to relief pursuant to Rule 60(b)(1).

Petitioner also seeks relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) which provides that "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for . . . any other

reason justifying relief from the operation of judgment.” Fed. R. Civ. P. 60(b)(6). Rule 60(b)(6) relief may be granted only in “unusual and extreme situations where principles of equity mandate relief.” *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990). In *Olle*, the court concluded that the petitioner did not timely file his petition and declined to equitably toll the limitations period because the petitioner did not explain how he diligently ensured that his habeas petition was properly filed. In his Motion for Relief from Judgment, Petitioner disagrees with the Court’s decision that his petition was untimely, but does not present any new facts or unusual or extreme circumstances which would warrant relief from judgment. Accordingly, the Court will deny the motion.

In his motion, Petitioner also seeks issuance of a certificate of appealability (“COA”). However, the Court denied a COA in its previous opinion and order denying the petition for habeas corpus [Dkt. #13], and the United States Court of Appeals for the Sixth Circuit Court has also denied a COA. Therefore, Petitioner’s request for a certificate of appealability will be denied.

Additionally, Petitioner has filed a Motion to Proceed *In Forma Pauperis* on appeal. Petitioner’s appeal concluded with the Court of Appeals’ denial of his application for a COA. This motion will, as a result, be denied as moot.

Accordingly, it is **ORDERED** that Petitioner’s Motion for Relief from Justice and for Certificate of Appealability [Dkt. #22] and Petitioner’s Motion to Proceed *In Forma Pauperis* [Dkt. #23] are **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: February 25, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 25, 2011.

s/Tracy A. Jacobs
TRACY A. JACOBS